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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,698	06/24/2002	Ernst-Jurgen Hake	026032-3851	4624

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EXAMINER

EDELL, JOSEPH F

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 12/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/049,698

Applicant(s)

HAKE ET AL.

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-38 and 40-46 is/are pending in the application.
- 4a) Of the above claim(s) 32-35, 40, 42-44 and 46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25, 26, 30, 36-38 and 45 is/are rejected.
- 7) ☒ Claim(s) 27-29, 31 and 41 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 June 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because all "means" clauses should be removed. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 25, 26, 30, and 45 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,882,071 to Föhl.

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Föhl discloses a seatback that includes all the limitations recited in claims 25, 26, 30, and 45. Föhl shows a seatback having a lower back part 10 (Fig. 1) joined to a seat part (see Fig. 1), an upper back part 12 (Fig. 1) that pivots about an axis relative to the lower back part out of a normal use position due to torque acting in the pivoting direction, a device for generating torque 30 (Fig. 1) including a force storage device acting irrespective of any seat occupant, means for detecting a rear-end impact including a vehicle crash sensor (see column 3, lines 24-30), an immobilization means for retention of the upper back part in the normal use position including a lever system 22 (Fig. 2), and a second immobilization means (see column 4, lines 4-6) for retention of the upper back part against a backward motion out of a safety position wherein in the event of a rear-end impact the force storage device is activated and pivoting motion is initiated.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 36-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Föhl ('071) in view of U.S. Patent No. 5,934,750 to Föhl.

Föhl ('071) discloses a seatback that is basically the same as that recited in claims 36-38 except that the lever lacks a pawl and the upper back part lacks a

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counterbearing, as recited in the claims. Föhl ('750) shows a seatback similar to that of Föhl ('071) wherein the seatback has a lever system (see Fig. 6) of an immobilization means that includes a pivotally mounted pawl 30 (Fig. 6) releasably engaging a pivotally mounted immobilization lever 34 (Fig. 6) wherein the pawl braces against a counterbearing 32 (Fig. 6) that is stationary relative to an upper back part 16 (Fig. 6) and is arranged on an upper end of a support bar 14 (Fig. 6) immovably joined at a lower back part projecting into an opening in a holding part of the upper back part. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the seatback of Föhl ('071) such that the seatback has a lever system with a pivotally mounted pawl that braces against a counterbearing mounted on the upper back part and engages a pivotally mounted immobilization lever wherein the counterbearing is arranged at an upper end of a support part joined to the lower back part that projects into a holding part in the upper back part, such as the seatback disclosed in Föhl ('750). One would have been motivated to make such a modification in view of the suggestion in Föhl ('750) that the pawl, immobilization lever, and counterbearing arrangement allow for incremental adjustment of a crash head rest during normal operation.

Allowable Subject Matter

6. Claims 27-29, 31, and 41 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments with regard to the 35 USC 102(b) rejection in view of Föhl ('071) filed 25 September 2003 have been fully considered but they are not persuasive. Applicant argues that the seatback of Föhl ('071) fails to disclose an immobilization means for retention of the upper back part in the normal position as recited in claim 25. See Figure 2 of Föhl ('071) for the teaching that the shear pin 18 immobilizes the upper back part 12 in the normal position and the spring 28 connected to the lever 22 counteracts any downward forces due to the weight of the cable 20a, both of which are nullified in the event of a rear end impact. Also, applicant argues that the vehicle crash sensor is not in effective connection with the lever system constituting the immobilization means as recited in claim 25. However, the vehicle crash sensor communicates with the cable 20 (Fig. 3) that is connected to the lever system 22 (Fig. 2). Lastly, the rejection under 35 USC 103(a) drawn toward claims 36-38 was argued solely on the premise that the cited art does not teach or suggest the seatback recited in claim 25, and as a result the above 35 USC 103(a) rejection of claims 36-38 remain.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.


Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-

2168.



JE

December 8, 2003



PETER R. BROWN
PRIMARY EXAMINER